UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

RYAN LEESTMA, Case No. 1:15-cv-00782

Plaintiff, Hon. Robert Holmes Bell

v.

JOE BLISS,

Defendant.

DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT

NOW COMES the Defendant, Joe Bliss, by and through counsel, Christopher M. Gibbons of the law offices of DUNN/GIBBONS/BOER, and for his Answer to the First Amended Complaint filed against in this cause, states as follows:

I. INTRODUCTION

1. This is an action seeking award of a domain name and damages against a formeremployee of Plaintiff who has misappropriated the domain name found at the uniform resource locator ("URL") <ryanleestma.com> (the "Domain Name"), which contains the precise spelling of Plaintiff's legal name. Plaintiff seeks redress pursuant to the Anti-cybersquatting Consumer Protection Act, 15 U.S.C. §§1125(d}and 15 U.S.C. § 8131.

ANSWER: Admit this Court has jurisdiction as alleged. Further, the Defendant denies that he has misappropriated any domain name or other identity or engaged in any actionable conduct with regard to this Plaintiff, or any other person, as alleged in the Complaint.

II. PARTIES, JURISDICTION, AND VENUE

2. Plaintiff is a resident of the Village of Caledonia, County of Kent, State of Michigan.

ANSWER: Admit.

3. Upon information and belief, Defendant is a resident of Kentwood, Michigan.

ANSWER: Denied, the Defendant is a resident of Wayland, County of Allegan, in the State of Michigan. Defendant admits that venue is properly found in the United States District Court, Western District of Michigan.

4. This Court has subject matter jurisdiction of this cause pursuant to 28 USC §§ 1331 and 1338 because this civil action arises under the Lanham Act, specifically 15 USC §§ 1125(d) and 8131.

ANSWER: Admit.

5. This Court has personal jurisdiction over Defendant because Defendant is a resident of the State of Michigan, Defendant has purposely availed himself of the privilege of acting in Michigan or causing a consequence in Michigan, Defendant committedintentionally tortious actions expressly aimed at a resident of the State of Michigan, which have caused harm to Plaintiff in Michigan and said harm was known by Defendant to be likely to be suffered by Plaintiff in Michigan, Defendant's actionswere expressly aimed at the State of Michigan, and Defendant's acts and/orconsequences have a substantial enough connection with Michigan to make theexercise of jurisdiction reasonable. The exercise of jurisdiction over Defendant doesnot offend traditional notions of fair play and substantial justice.

ANSWER: Admit that this Court has personal jurisdiction over the Defendant as the Defendant is a resident of the State of Michigan, County of Allegan. The Defendant further denies that he committed any intentional or other torts to be suffered by, or caused any harm to, the Plaintiff as alleged.

6. Venue is proper in this district pursuant to 28 USC § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the judicial district, because the injured party is a resident of this State and because the exercise of jurisdiction by the Court over Defendant is proper.

ANSWER: Admit.

III. **PLAINTIFF'S NAME**

7. Plaintiff is the owner of Information Systems Intelligence ("ISi"), one of Michigan's largest and most well respected information technology outsourcing firms, which has been ranked as one of Inc. Magazine's "Inc. 5000," which honors the fastest growing privately held companies in the United States.

ANSWER: Neither admit nor deny the allegation, the Defendant leaves the Plaintiff's to his strictest proofs on the matters alleged.

8. Plaintiff is also well and favorably known as a triathlete fundraiser for various epilepsy-related causes, including the Epilepsy Foundation of America. As an individual who has suffered from seizures, Plaintiff has dedicated himself to raising money for these causes by participating in athletic events, including, but not limited to, the World Long Course in Sweden, the Olympic Nationals, and the lronman World Championships.

ANSWER: Defendant neither admits nor denies the allegation, leaving the Plaintiff to his strictest proofs on the matters alleged.

9. Plaintiff has extensively advertised his personal name as a mark through his charity- based website http://www.swimbikerunforcharity.com. As a result, the consuming public has

come to recognize Plaintiffs personal name as a distinctive mark used in association with charitable fundraising services.

ANSWER: Defendant neither admits nor denies the allegation, leaving the Plaintiff to his strictest proofs on the matters alleged.

10. Plaintiffs name is a protected personal name and trademark under both 15 USC § 1125(d)(1)(A)(i) and 15 USC § 8131.

ANSWER: Defendant neither admits nor denies the allegation, leaving the Plaintiff to his strictest proofs on the matters alleged.

DEFENDANT'S MISCONDUCT

11. On January 8, 2012, Defendant registered <ryanleestma.com> without the knowledge or approval of Plaintiff.

ANSWER: Admit in part in that Defendant registered <ryanleetsma.com> without the knowledge or approval of the Plaintiff. Defendant denies this occurred on January 8, 2012, but rather states that he registered the name on May 5, 2015.

12. Defendant, the current registrant of the <ryanleestma.com> domain name is a former employee of Plaintiffs Information Systems Intelligence.

ANSWER: Admit.

13. Shortly after registering the <ryanleestma.com> domain name, Defendant approached Plaintiff and attempted to sell the <ryanleestma.com> domain name to Plaintiff for an amount in excess of Defendant's out of pocket costs to register the domain name.

ANSWER: Defendant denies this allegation for reason that it is untrue.

14. Between January 8, 2012 and approximately June 3, 2015, Defendant warehoused the <ryanleestma.com> domain name.

ANSWER: Defendant denies this allegation for reason that it is untrue. The Defendant leaves the Plaintiff to his strictest proofs on the matter alleged.

15. On approximately June 4, 2015, however, Defendant began copying and displaying Plaintiff's personal and private Facebook messages on a web page located at the <ryanleestma.com> domain name.

ANSWER: Admit in part and deny in part. The Defendant denies having copied and displayed any private Facebook messages authored by the Plaintiff for reason that the same is untrue. The Defendant admits he did copy and display public postings authored by the Plaintiff which were originally published by the Plaintiff on Facebook homepages of third parties. Consistent with the state of the law in the 6th Circuit such postings are not privileged and not subject to the protections of common or civil law notions of privacy. *Tompkins v Detroit Metro. Airport*, 278 F.R.D. 387 (E.D. Mich. 2012).

16. Additionally, Defendant began selectively reposting news stories concerning Plaintiff.

ANSWER: Admit.

17. In an attempt to justify his actions, Defendant published a purported disclaimer in the footer of his website, which stated, "Disclaimer: This site is not hosted by Ryan Leestma and is simply a collection of true information gathered from the internet."

ANSWER: Admit that Plaintiff published the purported disclaimer as alleged, so there would be no confusion as to the source of the information provided. In addition, Defendant regards all the information to be truthful and accurately reproduced, further providing citations as to the source of any individual content item displayed.

18. Evidencing Defendant's nefarious intent, Defendant published a header on the website, which proclaimed: "Public Information. The internet is forever."

ANSWER: The Defendant admits that this statement was published as a header on the subject website as alleged, but denies having done so with "nefarious intent".

19. Upon information and belief, Defendant undertook these actions with malice and with the intent of portraying Plaintiff in a negative light to the public.

ANSWER: Neither admit nor deny the allegation, leaving the Plaintiff to his strictest proofs on the matter.

COUNT 1
Violation of Anti-Cybersquatting Consumer Protection Act, 15 USC 1129 and 1125(d)

20. Plaintiff incorporates paragraphs 1-19 above as if fully restated herein.

ANSWER: Defendant incorporates responses to paragraphs 1-19 above as if fully restated herein.

21. The domain name <ryanleestma.com> consists of the name of another living person specifically that of Plaintiff, and the Plaintiff uses this name both as his personal name and as the origin of source of charitable fundraising services.

ANSWER: Defendant admits that the referenced domain name consists of the name of another living person specifically that of the Plaintiff, however the Defendant neither admits nor denies the allegation concerning the Plaintiff's uses for said name leaving the balance of the allegation to the Plaintiff and his strictest proofs.

22. Defendant registered <ryanleestma.com> without Plaintiffs consent and did so with the specific intent to profit from such name by selling <ryanleestma.com> back to Plaintiff for financial gain.

ANSWER: The Defendant admits that he registered <ryanleetsma.com> without Plaintiff's consent, as no such consent was required, but denies the allegation that he registered the name with specific intent to profit from the same as alleged, or in any other matter whatsoever. Defendant further affirmatively denies the allegation that he offered to sell or transfer the referenced domain to the Plaintiff for any sum of money or other consideration.

23. Defendant has used and continues to use <ryanleestma.com> with the bad faith intent to profit from said use.

ANSWER: Denied for reason that the same is untrue.

24. Defendant's legal name is not "Ryan Leestma," nor is such name commonly used to identify Defendant.

ANSWER: Admit.

25. Defendant has no trademark nor any other intellectual property rights in <ryanleestma.com>.

ANWER: Denied. The Defendant has acquired the referenced domain name for use in the exercise of his right to free speech which is protected by the First Amendment to the United States Constitution. The exercise of free speech includes the right to make and publish critical commentary.

26. Defendant has not used <ryanleestma.com> in connection with the bona fide offering of any goods or services, nor for any other good faith purpose.

ANSWER: The Defendant admits that he has not used the referenced domain name in connection with offering of goods or service, but denies the balance of the allegation, affirmatively stating that the Defendant used the referenced domain name for a legitimate purpose within the bounds of the law as referenced in response to paragraph 25 above.

27. Defendant has made no good faith use of <ryanleestma.com>, nor did he register<ryanleestma.com> in good faith.

ANSWER: Denied for reason that the same is untrue.

28. Through the use of Plaintiff's well-known name, Defendant intended to divert consumers, associates, customers, and business contacts to a site accessible under <ryanleestma.com> that could harm the goodwill represented by the name "Ryan Leestma" for commercial gain or with the intent to tarnish or disparage the name bycreating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

ANSWER: Denied for reason that the same is untrue, the Defendant further avers that he specifically disclaimed the involvement of Ryan Leetsma on the referenced web-page to avoid such confusion.

29. Defendant offered to sell <ryanleestma.com> to Plaintiff, the rightful owner of the name, for financial gain without having used, or having any intent to use, <ryanleestma.com> in the bona fide offering of any goods or services.

ANSWER: Denied for reason that the same is untrue. Defendant has never attempted to sell for financial gain the referenced domain name to the Plaintiff, or any other person, at any time.

30. Further, Defendant's intent was clear. Defendant registered <ryanleestma.com> out of spite and with a desire to harm the reputation of Plaintiff.

ANSWER: Denied for reason that the same is untrue.

31. Defendant's conduct as described above has caused irreparable and substantial harm to Plaintiff and his reputation and goodwill.

ANSWER: Denied for reason that the same is untrue, moreover, all of the information provided on the relevant web-page had been previously publically published in other electronic forums by other persons prior to being displayed on the Defendant's web-page in June of 2015.

32. As a direct result of Defendant's conduct, Plaintiff has been substantially harmed.

Accordingly, Plaintiff seeks recovery from Defendant of all amounts to which Plaintiff is entitled, including, without limitation, Defendant's profits from the use of <ryanleestma.com>, an award of actual damages in the maximum amount permitted by law, or in the alternative, an award of the maximum statutory damages in the amount of $100,000, transfer of <ryanleestma.com> to Plaintiff, a preliminary and permanent injunction requiring divestiture of <ryanleestma.com>, attorney fees, costs, and further relief as this Court deems just.

ANSWER: Denied as the same is untrue, the Plaintiff has not suffered actual or statutory harm, the Defendant is not liable for any actionable conduct in this case, and the Plaintiff is not entitled to any relief as alleged. Defendant's conduct is an exercise in his right free speech.

33. Title 15 U.S.C. § 8131(2) and 15 U.S.C. 1116 specifically provides for injunctive relief, costs, and attorney fees.

ANSWER: Admit that the statutes cited above provide for civil relief, however, the Defendant denies that he has engaged in any actionable conduct as alleged by the Plaintiff and assets that his conduct as alleged was made in the exercise of the Defendant's right to free speech.

COUNT 2
False Light Invasion of Privacy

34. Plaintiff incorporates paragraphs 1-34 above as if fully restated herein.

ANSWER: Defendant incorporates responses to Plaintiff's paragraphs 1-33 above as if fully restated herein.

35. By registering the <ryanleestma.com> domain name and publishing its associated website, Defendant has specifically identified Plaintiff.

ANSWER: Admit.

36. By registering the <ryanleestma.com> domain name and publishing its associated website, Defendant has brought publicity to the content that Defendant has displayed at the <ryanleestma.com> domain name, which consists of news stories concerning Plaintiff and Plaintiffs Facebook postings.

ANSWER: Denied as untrue. Defendant engaged in the reproduction of previously published news articles from legitimate news reporting sources on matters of public interest which the Defendant regards to be truthful. Plaintiff's Facebook posts were initially published to more than 800 persons, and are not protected by common law or civil law notions of privacy.

37. Defendant's selection and arrangement of news articles concerning Plaintiff and Plaintiff's Facebook postings was intended to place Plaintiff in a false light in the public eye, specifically, to portray Plaintiff as deceptive businessperson and as a braggart.

ANSWER: Denied that Defendant intended to place the Plaintiff in a false light, as alleged, further leaving the Plaintiff to his strictest proofs on the matters alleged. To the extent that the news articles and Facebook posts made by the Plaintiff reflect a negative personal character the republication of said items as a group by Defendant is protected critical commentary and not actionable, as alleged by Plaintiff.

38. Defendant published the news articles concerning Plaintiff and Plaintiff's Facebook postings to the general public.

ANSWER: Admit.

39. Defendant's selection and arrangement of news articles concerning Plaintiff and Plaintiffs Facebook postings did place Plaintiff in a false light in the public eye.

ANSWER: Denied for reason that the same is untrue.

40. Defendant's selection and arrangement of news articles concerning Plaintiff and Plaintiffs

Facebook postings was unreasonable, highly objectionable, and highlyoffensive to a reasonable person.

ANSWER: Denied for reason that the same is untrue.

41. Defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiff would be placed as a result of Defendant's publication.

ANSWER: Denied for reason that the same is untrue.

42. Defendant's actions have caused Plaintiff damages, including, but not limited to, monetary loss, embarrassment, humiliation, and mental pain that a person of ordinary sensibilities would have suffered.

ANSWER: Denied for reason that the same is untrue.

WHEREFORE, Defendant requests this Honorable Court deny the Plaintiff the relief requested, that this Court dismiss the Complaint with prejudice, further awarding the Defendant costs and attorney fees incurred in having to respond to, and defend, this action.

RELIANCE ON JURY DEMAND

Defendant hereby relies upon the Plaintiff's demand for trial by jury for all eligible counts contained within his Complaint.

Dated: October 1, 2015.

By: /s/ Christopher M. Gibbons

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